CHC Corporation *and* International Union of Bricklayers and Allied Craftsmen, Local 1, MD, VA, and DC a/w International Union of Bricklayers and Allied Craftsmen. Case 5–CA–25156

April 17, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

Upon a charge filed by the Union on March 2, 1995, the General Counsel of the National Labor Relations Board issued a complaint on June 8, 1995, against CHC Corporation, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On February 6, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On February 8, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated December 18, 1995, notified the Respondent that unless an answer were received by December 28, 1995, a Motion for Summary Judgment would be filed.[1]

Although the Respondent is in bankruptcy, it is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See id., and cases cited there.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a District of Columbia corporation with an office and place of business in Capitol Heights, Maryland, has been engaged as a general contractor and masonry subcontractor in the commercial construction industry. During the 12 months preceding issuance of the complaint, a representative period, the Respondent, in conducting its business operations, purchased and received at its Capitol Heights, Maryland facility goods and materials valued in excess of $50,000 directly from points outside the State of Maryland. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees of the Respondent in the classification of work falling within the jurisdiction of the Union as defined in the Agreement between the Mason Contractors Association, D.C. and the Union.

About August 11, 1994, the Respondent, an employer engaged in the building and construction industry, entered into an Independent Contractors Agreement (the 1994–1995 Independent Contractors Agree-

[1] On October 27, 1995, the General Counsel received a document filed by the Respondent, stating that the Respondent had declared bankruptcy (*In re CHC Corporation*, Case 95–15846DK (Bkrtcy D.Md.)) and claiming that the instant Board proceeding was stayed pursuant to 11 U.S.C. §362 of the Bankruptcy Code. On November 30, 1995, the General Counsel sent the Respondent a copy of the proof of claim (containing the complaint as an attachment) filed by the Board with the United States Bankruptcy Court for the District of Maryland, along with a proposed settlement and a letter explaining that Board proceedings are not stayed under §362 by bankruptcy proceedings.

By letter dated December 27, 1995, and addressed to the General Counsel, the Respondent acknowledged receipt of the General Counsel's December 18, 1995 letter and questioned the authority of the Board to proceed. On January 25, 1996, a notice of pendency of unfair labor practice litigation (again with a copy of the complaint attached) was filed with the Clerk of Court by the General Counsel and a copy served on the Respondent.

ment) whereby it incorporated by reference the collective-bargaining agreement negotiated by the Mason Contractors Association, D.C. and the Union, effective for the period August 11, 1994, to April 30, 1995. Since about August 11, 1994, pursuant to the 1994–1995 Independent Contractors Agreement, the Union has been recognized as the exclusive collective-bargaining representative of the unit by the Respondent without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act. Such recognition has been embodied in the 1994–1995 Independent Contractors Agreement effective from August 11, 1994, to April 30, 1995. From August 11, 1994, to April 30, 1995, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit.

About January 20, 1995, the Respondent interrogated employees about their union activities and sympathies.

About February 3, 1995, the Respondent conducted a poll of its employees to discover their union sympathies and to solicit their withdrawal from the Union.

Since about August 11, 1994, the Respondent failed to continue all the terms and conditions of the 1994–1995 Independent Contractors Agreement by, among other things, failing to make the benefit trust fund contributions as required by article X and failing to adhere to the dues-checkoff requirements of article IX. The Respondent engaged in this conduct without the Union's consent. These terms and conditions of employment are mandatory subjects for the purposes of collective bargaining.

About February 3, 1995, the Respondent withdrew its recognition of the Union as the exclusive collective-bargaining representative of the unit.

CONCLUSIONS OF LAW

1. By interrogating employees about their union activities and sympathies and polling them to discover their union sympathies and to solicit their withdrawal from the Union, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By unilaterally failing to continue in effect all the terms and conditions of employment of the 1994–1995 Independent Contractors Agreement and by withdrawing its recognition from the Union, the Respondent has been failing and refusing to bargain collectively with the limited exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing, since August 11, 1994, to continue all the terms and conditions of the 1994–1995 Independent Contractors Agreement by, among other things, failing to make the benefit trust fund contributions as required by article X and failing to adhere to the dues-checkoff requirements of article IX, we shall order the Respondent to comply with the terms of the 1994–1995 Independent Contractors Agreement including, among other things, the provisions regarding benefit trust fund contributions and dues-checkoff requirements. In addition we shall order the Respondent to make whole its unit employees by making all such delinquent contributions to the benefit trust fund, including any additional amounts due the fund in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). Furthermore, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[2] Finally, we shall order the Respondent to deduct and remit union dues as required by the 1994–1995 Independent Contractors Agreement and to reimburse the Union for its failure to do so, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, CHC Corporation, Capitol Heights, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their union activities or sympathies.

(b) Polling its employees to discover their union sympathies or to solicit their withdrawal from International Union of Bricklayers and Allied Craftsmen,

[2] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

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(c) Unilaterally failing to continue all the terms and conditions of employment of the 1994–1995 Independent Contractors Agreement by, among other things, failing to make the benefit trust fund contributions as required by article X and failing to adhere to the dues-checkoff requirements of article IX.

(d) Withdrawing recognition of the Union as the limited exclusive collective-bargaining representative of the unit during the term of the 1994–1995 Independent Contractors Agreement:

> All employees of the Respondent in the classification of work falling within the jurisdiction of the Union as defined in the Agreement between the Mason Contractors Association, D.C. and the Union.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with all the terms and conditions of the 1994–1995 Independent Contractors Agreement, including the provisions concerning benefit trust fund contributions and dues-checkoff requirements.

(b) Make the unit employees whole for any loss of earnings and benefits and expenses ensuing from its failure to comply with the provisions of the 1994–1995 Independent Contractors Agreement since August 11, 1994, with interest, as set forth in the remedy section of this decision.

(c) Reimburse the Union for any loss of dues resulting from its failure to comply with the dues-checkoff provision of the 1994–1995 Independent Contractors Agreement since August 11, 1994, with interest, as set forth in the remedy section of this decision.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Capitol Heights, Maryland, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. April 17, 1996

William B. Gould IV,	Chairman
Margaret A. Browning,	Member
Charles I. Cohen,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate employees about their union activities or sympathies.

WE WILL NOT poll our employees to discover their union sympathies or to solicit their withdrawal from International Union of Bricklayers and Allied Craftsmen, Local 1, MD, VA, and DC a/w International Union of Bricklayers and Allied Craftsmen.

WE WILL NOT unilaterally fail to continue all the terms and conditions of employment of the 1994–1995 Independent Contractors Agreement we entered into with the Union by, among other things, failing to make the benefit trust fund contributions as required by article X or failing to adhere to the dues-checkoff requirements of article IX.

WE WILL NOT withdraw recognition of the Union as the limited exclusive collective-bargaining representative of the unit during the term of the 1994–1995 Independent Contractors Agreement entered into by us, effective for the period August 11, 1994, to April 30, 1995:

> All our employees in the classification of work falling within the jurisdiction of the Union as defined in the Agreement between the Mason Contractors Association, D.C. and the Union.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with all the terms and conditions of the 1994–1995 Independent Contractors Agreement, including the provisions concerning benefit trust fund contributions and dues-checkoff requirements.

WE WILL make our unit employees whole for any loss of earnings and benefits and expenses ensuing from our failure to comply with the provisions of the 1994–1995 Independent Contractors Agreement since August 11, 1994, with interest.

WE WILL reimburse the Union for any loss of dues resulting from our failure to comply with the dues-checkoff provision of the 1994–1995 Independent Contractors Agreement since August 11, 1994, with interest.

CHC CORPORATION